

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ABELARDO SOTO,

Plaintiff,

v.

CALIFORNIA HEALTH CARE
FACILITY, et al.,

Defendants.

No. 2:23-cv-00918-EFB (PC)

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. In addition to filing a complaint, plaintiff filed an application for leave to proceed in forma pauperis (ECF No. 2) and a request for the appointment of counsel (ECF No. 3). The court grants the request for leave to proceed in forma pauperis, dismisses the complaint with leave to amend, and denies the request for appointment of counsel.

Application to Proceed in Forma Pauperis

The court has reviewed plaintiff's application and finds that it makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

Screening Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.

1 § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion
2 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which
3 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
4 relief.” *Id.* § 1915A(b).

5 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
6 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
7 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
8 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
9 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
10 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
11 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
12 U.S. 662, 679 (2009).

13 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
14 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
15 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
16 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
17 678.

18 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
19 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
20 content that allows the court to draw the reasonable inference that the defendant is liable for the
21 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
22 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
23 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
24 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

25 Screening Order

26 The complaint (ECF No. 1) names as defendants Dr. Oladunjoye, the San Joaquin
27 Hospital and the California Health Care Facility. It purports to bring claims for inadequate
28 medical care under the Eighth Amendment. It alleges that on March 30, 2022, the California

1 Health Care Facility sent plaintiff to the San Joaquin General Hospital on an emergency basis.
2 The following day, plaintiff underwent spinal surgery with Dr. Oladunjoye. While plaintiff was
3 under anesthesia, his head slipped out of a “faulty” Mayfield device that was being used to secure
4 it. ECF No. 1 at 4. The resulting injury required head staples and stitches and plaintiff now
5 experiences headaches and dizziness. According to the complaint, Dr. Oladunjoye, the surgery
6 staff, and prison officials tried to hide the incident. As relief, plaintiff seeks \$500,000 in
7 damages. As discussed below, these allegations are not sufficient to survive screening.

8 To plead a claim under the Eighth Amendment, plaintiff must plead facts showing that the
9 defendant acted with deliberate indifference. Deliberate indifference may be shown where
10 defendants “deny, delay or intentionally interfere with medical treatment.” *Hutchinson v. United*
11 *States*, 838 F.2d 390, 394 (9th Cir. 1988). “[T]he [defendant] must be both aware of facts from
12 which the inference could be drawn that a substantial risk of serious harm exists, and he must also
13 draw the inference.” *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Inadequate treatment due to
14 medical malpractice, negligence, or even gross negligence, does not rise to the level of a
15 constitutional violation. *See Wilson v. Seiter*, 501 U.S. 294, 297, 111 S. Ct. 2321, 115 L. Ed. 2d
16 271 (1991) (quoting *Estelle*, 429 U.S. at 105-06); *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th
17 Cir. 2004).

18 The allegations pertaining to the cause of plaintiff’s head injury do not demonstrate
19 deliberate indifference. Plaintiff blames his injury on a “faulty” Mayfield device, suggesting that
20 his injury was the result of negligence. Further, the allegations that Dr. Oladunjoye and others
21 tried to “hide the incident” do not constitute deliberate indifference unless plaintiff can show that
22 their conduct led to further injury. *See Hallett v. Morgan*, 296 F.3d 732, 746 (9th Cir. 2002).
23 Finally, the court notes that to state a claim under § 1983, plaintiff must allege that the violation
24 was committed by a person acting under the color of state law. Neither San Joaquin General
25 Hospital nor the California Health Care Facility are “persons” within the meaning of § 1983. If
26 plaintiff knows the names of the surgical staff or the prison officials who he believes violated his
27 rights, he should name those individuals as defendants in any amended complaint and plead facts
28 showing how they were personally involved in violating his Eighth Amendment rights.

For these reasons, plaintiff's complaint is dismissed with leave to amend.

Leave to Amend

If plaintiff chooses to file an amended complaint it should observe the following:

Any amended complaint must identify as a defendant only persons who personally participated in a substantial way in depriving him of a federal constitutional right. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an act, participates in another's act or omits to perform an act he is legally required to do that causes the alleged deprivation). The complaint should also describe, in sufficient detail, how each defendant personally violated or participated in the violation of his rights. The court will not infer the existence of allegations that have not been explicitly set forth in the amended complaint.

The amended complaint must contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

Plaintiff may not change the nature of this suit by alleging new, unrelated claims. See *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

Any amended complaint must be written or typed so that it so that it is complete in itself without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the earlier filed complaint no longer serves any function in the case. See *Forsyth v. Humana*, 114 F.3d 1467, 1474 (9th Cir. 1997) (the "amended complaint supersedes the original, the latter being treated thereafter as non-existent.") (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)).

Finally, the court notes that any amended complaint should be as concise as possible in fulfilling the above requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual background which has no bearing on his legal claims.

Request for Appointment of Counsel

District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional

1 circumstances, the court may request an attorney to voluntarily to represent such a plaintiff. *See*
2 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v.*
3 *Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional
4 circumstances” exist, the court must consider the likelihood of success on the merits as well as the
5 ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues
6 involved. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). Having considered those factors,
7 the court finds there are no exceptional circumstances in this case.

8 Conclusion

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Plaintiff’s request to proceed in forma pauperis (ECF No. 2) is GRANTED;
- 11 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in
12 accordance with the notice to the California Department of Corrections and
13 Rehabilitation filed concurrently herewith;
- 14 3. Plaintiff’s request for the appointment of counsel (ECF No. 3) is denied without
15 prejudice;
- 16 4. Plaintiff’s complaint (ECF No. 1) is DISMISSED with leave to amend within 30
17 days of service of this order; and
- 18 5. Failure to comply with this order may result in dismissal of this action for failure to
19 state a claim.

20
21 DATED: August 18, 2023.

22 
23 EDMUND F. BRENNAN
24 UNITED STATES MAGISTRATE JUDGE
25
26
27
28